

STATEMENT OF THE CASE

Gerald James appeals the revocation of his probation.

We affirm.

ISSUES

1. Whether the evidence was sufficient to support the revocation of James's probation.
2. Whether the petition to revoke James's probation was untimely.

FACTS

On May 27, 2004, James pleaded guilty to class A misdemeanor check deception in Washington Circuit Court. The trial court sentenced James to 365 days, suspended 339 days and placed James on probation for a period of one year. On April 29, 2005, the State filed a petition to revoke James's probation for, among other things, failing to pay restitution; complete court-ordered community services; and report to his probation officer on a monthly basis. Specifically, the State asserted that James had last contacted the probation department in December of 2004.

In February of March of 2005, James moved from Clark County to Floyd County but failed to notify his probation officer of his change of address. On May 2, 2005, the trial court issued a summons for the hearing on the petition for probation revocation. According to the return of service, the summons was left at James's last known address, located in Clark County's Jeffersonville, on May 4, 2005. James did not appear at the scheduled hearing.

On May 14, 2008, the State filed a second petition to revoke James's probation. In addition to the acts alleged in the first petition, the State alleged that James had been charged with class D felony neglect of a dependent on August 11, 2007, and subsequently convicted and incarcerated on that charge. The trial court issued a bench warrant on May 16, 2008, and again on March 31, 2009.

Due to continuances, the trial court did not hold a hearing on the State's petition until March 31, 2011. James admitted to violating virtually every condition of his probation, including failing to pay restitution or complete community service. He also admitted to having been convicted of neglect of a dependent. Finding that James had violated his probation as alleged by the State, the trial court imposed the previously suspended 339-day sentence.

DECISION

1. Sufficiency of the Evidence

James asserts that insufficient evidence exists to support the trial court's finding of a probation violation. We disagree.

The decision to revoke probation is within the sole discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion. On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses. If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation.

Woods v. State, 892 N.E.2d 637, 639-40 (Ind. 2008) (internal citations omitted). “A trial court may revoke a person’s probation upon evidence of the violation of any single term of probation.” *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001).

James admitted several probation violations. The evidence therefore is sufficient to support the revocation of his probation. James’s argument to the contrary is merely an invitation to reweigh the evidence and judge the credibility of the witnesses, which we will not do. Accordingly, we find that the trial court acted within its discretion when it revoked James’s probation.

2. Untimely Petition

James argues that the trial court improperly revoked his probation, asserting that the State untimely filed the petition to revoke probation. Specifically, he contends that his probation period expired prior to the filing of the second petition to revoke probation.

Indiana Code section 35-38-2-3 provides:

(a) The court may revoke a person’s probation if:

(1) the person has violated a condition of probation during the probationary period; and

(2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.
- (c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

Thus, if a defendant violates probation during the original term of probation, the probation period is tolled from the filing of the revocation petition until its disposition. *See Mumford v. State*, 651 N.E.2d 1176, 1177 (Ind. Ct. App. 1995), *trans. denied*. This “precludes a probationer from violating the terms of his probation and fleeing the jurisdiction until the term of the suspended sentence elapses, thereby thwarting the State’s efforts to revoke his probation.” *Id.* (quoting *Alley v. State*, 556 N.E.2d 15, 16 (Ind. Ct. App. 1990), *trans. denied*).

The record shows that James violated his probation during the original term of probation. Prior to the expiration of James’s probationary period, the State filed a petition to revoke his probation, and the trial court ordered that a summons be issued. According to the return of service, the sheriff’s department left the summons at James’s last known address in Clark County on May 4, 2005, thereby tolling James’s probationary period until March 31, 2011, the date the trial court made a final determination of the charge. Given these facts, we find that the State timely filed both the first and second petition to revoke James’s probation. *See Phillips v. State*, 611

N.E.2d 198, 199 (Ind. Ct. App. 1993) (finding that the defendant was on probation when the State filed its second petition to revoke his probation as a summons properly tolled the probation period). We therefore cannot say the trial court erred in revoking James's probation.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.